No. 13552

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

RAFEO IVANCEVIC, Consul General of the Federal People's Republic of Yugoslavia,

Appellant,

vs.

ANDRIJA ARTUKOVIC,

Appellee,

JAMES J. BOYLE, United States Marshal,

Appellant,

vs.

ANDRIJA ARTUKOVIC,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

Jurisdiction.

The jurisdiction of the Court of Appeals is based upon Title 28, U. S. C., Section 2253, as follows:

> "In a *habeas corpus* proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had."

Constitutional Provision, Treaty and Statute Involved.

Appellee has raised the question whether a treaty of extradition has been negotiated and ratified between the United States and Jugo-Slavia in accord with Article II, Section 2, United States Constitution.

Appellant and *Amicus Curiae* raised the question whether a treaty between the United States and Serbia concluded October 25, 1901 (32 Stats. 1890), is binding between the United States and Yugoslavia.

Summary of Argument.

I.

The applicable rule of international law is that bilateral treaties do not survive the extinction or disappearance of one of the high contracting parties thereto.

II.

Serbia was extinguished as a state, international person or "Juridical Entity" by its incorporation or amalgamation into the Serb-Croat-Slovene State in December, 1918.

a. How the Serb-Croat-Slovene State was formed or created.

b. Evidence as to the political acts of Serbia by which its international personality was extinguished.

c. Physical evidence of the extinction of Serbia as an international state.

d. Recognition of the Serb-Croat-Slovene State as a new state by the several European states and the United States.

e. Recognition of the Kingdom of Serbs, Croats and Slovenes as a new state by the several European states.

f. Recognition of the Serb-Croat-Slovene State by the United States.

III.

A result of Serbia's extinction was the voidance of her treaties with the United States.

IV.

Rebuttal.

1. The creation of Italy compared with the creation of the Serb-Croat-Slovene State.
2. The Opinion of the Secretary of State, June 4, 1921, that the Serbian Treaties were applicable to the Serb-Croat-Slovene State was a misapprehension of prior political decision of the United States Government.
3. Distinguishing *Terlinden v. Ames,* 184 U. S. 270.
4. The debts of Serbia were normally assumed by Jugo-Slavia.
5. "Opinions of the United States Courts."

Statement of the Case.

Appellee accepts the statement of the case as set forth in appellant's brief, pages 3, 4, 5 and 6, and adds the following:

That the present extradition proceedings are based upon an alleged extradition treaty proclaimed May 17, 1902, between the Kingdom of Serbia and the United States of America; that Article VI of the said Treaty reads as follows:

> "A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offense of a political character."

The periods referred to in this proceeding occurred during World War II and during the political strife between the Republic of Croatia and the communist forces of the Marshall Tito's Yugoslavian Government.

That Andrija Artukovic is a lawyer, a native of Croatia, and during the said period was Minister of Interior and Minister of Justice of the Croatian Republic [R. pp. 181-183, 189]; that the killings, if any occurred, were during the war and during the political strife and, as such, were of a political character and not subject to extradition under the terms of the said extradition treaty; that killings which occur during a war or during internal political strife are not extraditable. (*United States ex rel. Giletti v. Commissioner of Immigration,* 35 F. 2d 687; *In re Ezeta* (D. C. Cal.), 62 Fed. 972.)

That extradition hearings, as provided in the extradition statute, have not been held; that the defenses to the

extradition proceeding have not been heard; that the only issue to be determined in this appeal is the United States District Court's decision concluding that there is no extradition treaty in existence between the Federal Peoples Republic of Yugoslavia and the United States of America.

Appellee's Position.

There is not in effect a treaty of extradition between the United States and Yugoslavia because there has not been negotiated and ratified between the two states an extradition treaty since the United States recognized the Kingdom of the Serbs, Croats and Slovenes, now known as Yugoslavia, as a new international state in 1919.

This premise is not disputed directly by appellant or *amicus curiae,* but it is urged by them that an extradition treaty negotiated and ratified between the United States and Serbia in 1901-1902, is valid and binding between the United States and Yugoslavia because the latter state is merely an enlarged or greater Serbia.

Per contra, appellee urges that the said Serbo-American extradition treaty is void because:

I. It is a recognized rule of International Law that bilateral treaties do not survive the extinction or disappearance of a contracting party thereto;

II. Serbia was extinguished as an international state or person or "juridical entity" upon its incorporation or amalgamation into the Serb-Croat-Slovene State in 1918; and

III. A result of Serbia's extinction as an international state was the voidance of her treaties with the United States.

ARGUMENT.

I.

The Applicable Rule of International Law Is That Bilateral Treaties Do Not Survive the Extinction or Disappearance of One of the Contracting Parties Thereto.

Appellee submits that appellant and *amicus curiae* have not applied the proper principle of International Law to the issue arising in this proceeding. It is not the intention of appellee, nor was it the purpose of the District Court, to challenge the correctness of the rule of International Law "that treaty rights and obligations survive changes in territory and forms of government of either of the contracting parties," whether or not "newly annexed territory," as seemingly misapprehended by appellant and *amicus curiae* in page after page of their briefs (see App. Br. pp. 9, 10-18, and *Amicus Curiae* Br., pp. 6, 7-15).

The District Court [R. pp. 57-62] and appellee are guided by the recognized principle of International Law that bilateral treaties do not survive the extinction or disappearance, as an international state, of one of the contracting parties thereto, and in support of said prinple of law the following authorities appear:

Hyde, International Law Chiefly as Interpreted and Applied by the United States, 1922, Volume II, page 83:

> "When a State relinquishes its life as such through incorporation into or absorption by another State, the treaties of the former are believed to be automatically terminated."

Oppenheim's International Law, Lauterpacht, Volume I, 5th Edition, 1937, page 745:

> "A treaty, although it has neither expired, nor been dissolved, may nevertheless lose its binding force by becoming void. And such voidance may have different grounds—namely, extinction of one of the two contracting parties, * * *."

Fenwick, International Law (Rev. Ed. 1934), page 122:

> "Whether coercive or voluntary, the extinction of the State as an International Person puts an end to its own international rights and obligations. * * *"

Research in International Law, Harvard, 29 A. J. I. L., Supp. Part III, 1935, pages 1165-1166:

> "Article 33(b). A treaty to which only two States are parties is terminated when one of the parties becomes extinct."

And our final authority is the United States Government, if we interpret correctly the following statement on page 4 of *Amicus Curiae* Brief, under subtitle "Interest of the United States":

> "* * * The Executive Branch of the Government has proceeded heretofore on the theory that, in the absence of *the complete absorption of one of the high contracting parties to the treaty by a third country,* a mere change in the form of government or the expansion or contraction of the geographical boundaries of that high contracting party did not affect the termination of treaty relations with that party." (Emphasis ours.)

The emphasized portion of the quotation is exactly the point upon which the District Court and appellee believe the instant case turns.

II.

Serbia Was Extinguished as a State, International Person or "Juridical Entity" by Its Incorporation or Amalgamation Into the Kingdom of the Serbs, Croats and Slovenes.

Upon this point a clear issue is raised between the District Court's decision and appellee's position, on the one hand, and the position of appellant and *amicus curiae*, on the other. *Amicus curiae* maintains as Point II of its argument that "Serbia continued as an international juridical entity upon its enlargement into the Kingdom of the Serbs, Croats and Slovenes" (Yugoslavia) (see Br. pp. 6, 15-24), in other words, Yugoslavia is an enlarged or greater Serbia. While appellants at first use the somewhat ambiguous terms, "successor to" and "has juridical continuity with," in alleging Yugoslavia's relationship to Serbia, finally, on page 34 of brief, appellants take the same position as *amicus curiae* and maintain the "continuation of the juridical entity of Serbia into the enlarged State of the Serbs, Croats and Slovenes."

The District Court [R. p. 61] and appellee support the view that Yugoslavia was a new state, not a greater or enlarged Serbia, but a state into which Serbia was incorporated or amalgamated, thereby causing the extinction or discontinuity of Serbia as an independent state or international person.

(a) How the Serb-Croat-Slovene State Was Formed or Created.

In determining whether Serbia was extinguished in the creation of Jugo-Slavia* *i. e.,* whether Jugo-Slavia was a new state or merely an enlargement or continuation of former Serbia, it is proper to consider the steps by which Jugo-Slavia was formed, and the elements which went into its making.

Naturally, it was not created on a moment's notice. The plan for its composition was formulated in July, 1917, at Corfu, by conferences between and among representatives of Serbia (its government-in-exile was situate there), and representatives of the putative State of the Slovenes, Croats and Serbs. There was issued a statement of their plans and purpose known as the Declaration of Corfu, a translation of which is attached as Appendix A. A copy of this declaration was forwarded to the United States State Department by its Special Agent (Dodge) at Corfu (see Foreign Relations U. S. 1918, Supp. 1, Vol. I, p. 829; also Appendix B).

Briefly, it provided for the voluntary union of Serbia, Montenegro and the then unformed State of the Slovenes, Croats and Serbs "to constitute a free, national and independent State," and that the said union was to have its own constitution, national assembly elected by universal suffrage, with equal, direct and secret ballot, flag, coat-of-arms, freedom of religion, equal use of Cyrillic and

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*Appellee calls the Court's attention to the historical inaccuracy of referring to either the State of the Serbs, Croats and Slovenes or to the Kingdom of the Serbs, Croats and Slovenes as "Yugoslavia." The plain historical fact is that the term "Yugoslavia" had no official recognition prior to the proclamation of the dictatorship of King Alexander in 1929.

Latin alphabets, unification of the calendar, etc., under the dynasty of the Karageorgevic family, the ruling house of Serbia.

Thereafter, as admitted in Appellants' Brief, on October 29, 1918, the Southern Slavs, formerly of Austria-Hungary, proclaimed the establishment of the "State of the Slovenes, Croats and Serbs"; on November 8, 1918, the Serbian Government formally recognized the new state [see App. Br. pp. 23-24; also R. pp. 83-84]. On November 11, 1918, Serbia asked the United States to recognize the State of the Slovenes, Croats and Serbs and treat it as an ally [R. pp. 83-84].

Then on November 24, 1918, the government of the State of the Slovenes, Croats and Serbs took the first step toward the Union provided for in the Declaration of Corfu, and resolved to proclaim the unification of their state with Serbia and Montenegro "into a unified State of the Serbs, Croats and Slovenes" (App. Br. p. 24). On November 26, 1918, Montenegro took a similar decision (see App. Br. p. 24). It is clear that the declaration for unification made by the State of the Slovenes, Croats and Serbs was not one of annexation to Serbia; it was an open offer to unite with Serbia and Montenegro to constitute the new "free, national and independent State" described in the Declaration of Corfu. Before the union could be completed, Serbia had to declare, in turn, its union with the State of the Slovenes, Croats and Serbs.

And on December 1, 1918, Serbia received the resolution of unification proposed by the Slovene-Croat-Serb State, and in the clearest possible language *declared its union with that state to form a single kingdom* [see Note of Serbian Charge to Secretary of State, R. pp. 84-85].

The language of the Regent of the Serbian State declaring such union is so clear and unmistakable, and yet is so conveniently distorted by *amicus curiae* in lifting quotations out of the full text (Br. p. 15, 2nd par.) that appellee is impelled to quote here the pertinent language:

> "* * * The Delegation by one (a) solemn address, presented to his Highness the Crown Prince, has proclaimed the Union of all the Serbian, Croatian and Slovene provinces of the former Dualist Monarchy *into one single State* with the Kingdom of Serbia under the Dynasty of His Majesty King Peter and under the regency of the Crown Prince Alexander. *In reply to this address His Royal Highness the Crown Prince has proclaimed the Union of Serbia with the above mentioned independent State of Slovenes, Croats and Serbs into one single Kingdom:* 'Kingdom of the Serbs, Croats and Slovenes.' * * *."

It seems clear from the above quotation that the State of the Slovenes, Croats and Serbs proclaimed a union with—*not* an annexation to—Serbia into a single state—Jugo-Slavia. And it seems equally clear that before such a union can be completed, the other state of the intended union must be willing to accept the idea and join in the proclamation of the union. Therefore, appellee urges that the italicized sentence of the above quotation was an absolute necessity to the voluntary union by which Jugo-Slavia was formed, and that its meaning is so clear that it was necessary for appellants and *amicus curiae* to ignore it in arriving at the theory that Serbia continued as a "juridical entity" enlarged into Jugo-Slavia.

Thus in the formation of Jugo-Slavia there were joined three independent states—Serbia, Montenegro and the

State of the Slovenes, Croats and Serbs; *not* as appellants suggest (Br. p. 32) "an existing international juridical entity"—Serbia—to which the "other elements were joined." Serbia and Montenegro had long been recognized as International Persons, and the State of the Slovenes, Croats and Serbs was expressly recognized by Serbia, as admitted by appellants (Br. p. 24), and was belatedly recognized by the United States by its express recognition of the union forming Jugo-Slavia [Statement of Secretary of State, Feb. 7, 1919; R. p. 89].

(b) Evidence as to the Political Acts of Serbia by Which Its International Personality Was Extinguished.

If the foregoing is not enough to convince one that Serbia voluntarily ended its independent existence by a union with other states, we may also consider the acts of Serbia by which it ended its international existence. These acts were reported to the United States State Department and to the American Peace Mission at Paris by Special Agent Dodge on the scene at Belgrade in his notes to the American Secretary of State, December 24, 1918 (not published) and January 10, 1919 [R. pp. 85-88].

It is a matter of historical knowledge that Serbia in 1918, and for many years prior, was governed by a royal dynasty, a national parliament, elected to office, known as the Skuptschina, and an executive ministry or cabinet responsible to the Skuptschina, under a national constitution.

From Dodge's report we learn that after the union forming Jugo-Slavia, the Serbian Skuptschina held a "short session," elected delegates to the "National Council," and "adjourned presumably to meet no more." Thus the dissolution of the Serbian national parliament or legislature.

In the new state there was set up immediately a national provisional legislature known as a "National Council" composed of delegates from the Serbian Skuptschina, from the National Council of the former Slovene-Croat-Serb State, from Montenegro, from *Old Serbia, *Macedonia, Voivodina, Banat. In this provisional parliament were clearly represented all the peoples and minorities of the Kingdom, not only the Serbs.

Dodge informs us also that there was formed a Jugo-Slav ministry or cabinet of "representative character," "composed of men of all the political parties, regions, and creeds of the new State," from which it can only be understood the Serbian ministry was dissolved, and that the new ministry was also definitely Jugo-Slav in character, not Serbian. Thus the disappearance of another organ of the Serbian Government.

Dodge informs us further that immediate arrangements were made for election of a Constitutional Convention on the basis of "universal suffrage," something apparently not available in former Serbia, the said convention to frame a new constitution for the new state. Also that a "special ministry" had been appointed to draft electoral laws for the convention and plans for the constitution.

Summarizing, not only do we find the new Kingdom of the Serbs, Croats and Slovenes equipped or in process of being equipped with *new* national governmental organs, not transplanted Serbian organs of government, but we find that Serbia stripped itself of all governmental organs by which it might have independently engaged in formal relations with foreign States and thus have continued its

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*Though annexed to Serbia in the wars of 1912-1913, not represented in the Serbian Skuptschina.

international existence. The only Serbian organ transferred to the new State was the royal dynasty, and it is important to note that this ruler no longer called himself the King (or Crown Prince) of Serbia, but referred to himself officially only as the King of the Serbs, Croats and Slovenes (Treaty of St. Germain, Sept. 10, 1919). The importance of these losses of identity by Serbia becomes the greater when it is remembered that the German States which formed the North German Union and the German Empire (the subject of inquiry by the Supreme Court in *Terlinden v. Ames,* 184 U. S. 270) retained their separate existence and governmental organs at least so far as to permit the individual German States to enter into diplomatic and treaty relations with foreign States, and further, that the Emperor of Germany continued to describe himself as the King of Prussia as well, and so described himself in a number of treaties and agreements with the United States executed after 1871 in behalf of the German Empire. (Malloy, Treaties, Conventions, etc., U. S., Vol. I, pp. 550, etc.) This comparison is more fully discussed later under the subhead, "Distinguishing Terlinden v. Ames."

Appellant (Br. p. 38) and *Amicus Curiae* (Br. p. 16) make much of the fact that the Legations, Consulate and other Missions of Serbia became the Legations, Consulates and other Missions of the Kingdom of the Serbs, Croats and Slovenes. Appellee urges that this has no importance as it would be only natural that the new Jugo-Slav State would use facilities of its components freely available to it.

Doubtless it used also buildings in Belgrade for its governmental offices which had formerly been so used by the Kingdom of Serbia. Additionally, the diplomatic service is merely an agent of an executive department of government, not an independent policy-maker, and as we have noted from Dodge, the Serbian ministry was dissolved and a new ministry representative of all Jugo-Slavia was formed. Appellee urges also that appellant and *amicus curiae* have strained the meaning of "Legations, Consulates and other Missions of Serbia" by interpreting them to mean "Serbian diplomatic representatives" (Br. pp. 38 and 16, respectively), and stating that they remained unchanged throughout the world. Without examining the rolls of each Serb-Croat-Slovene legation, consulate or mission to see what personnel changes occurred, appellee believes it sufficient to point out to this Court that the first Serb-Croat-Slovene Minister of Foreign Affairs (the chief of the diplomatic service) was not a "hold-over" from the dissolved cabinet of former Serbia, nor any other Serb, but was Ante Trumbitch, a Croat and spokesman for the State of the Slovenes, Croats and Serbs and a signer for those people of the Declaration of Corfu; and further that Trumbitch and Ivan Zolger, the latter a Slovene professor, were sent by the new State to Paris to join with delegates of former Serbia in representing the new State at the Peace Conference. In fact, Trumbitch (Trumbic) and Zolger were two of the three Serb-Croat-Slovene representatives who negotiated with the United States and others the Treaty of St. Germain, and Trumbitch is therein described as Minister of Foreign Affairs.

(c) Physical Evidence of the Extinction of Serbia as an International State.

While it is recognized that physical differences alone do not mark a new State or the end of an old State, yet together with the background of the formation of the Kingdom of the Serbs, Croats and Slovenes and the important political acts just detailed, the physical differences complete a picture that shows clearly a new State—one whose political and physical characteristics are entirely different than those of Serbia with whom the United States constitutionally entered into an extradition treaty in 1901-1902.

For instance, Serbia had a national flag and coat-of-arms. For the new State there was a new flag and new coat-of-arms, and the Serbian flag was used for internal domestic occasions or holidays just as, for example, the Lone Star flag of Texas. In former Serbia the official written language was in Cyrillic characters. In Jugo-Slavia, Cyrillic and Latin characters were officially used. Chronologically, old Serbia was on the Julian calendar; as agreed at Corfu, Jugo-Slavia was placed on the Gregorian calendar.

Appellant (Br. p. 38) has stressed the fact that Belgrade was the capital of both Serbia and Jugo-Slavia. Yet this was possibly the only mark of political geographic similarity between Serbia and Jugo-Slavia. Reference to any geographic authority will inform us that Serbia in 1914 was a state of approximately 37,000 square miles in size, approximately 4,000,000 population, entirely land-locked, and with an economy principally agricultural. But Jugo-Slavia in 1919 was a state approximately 96,000 square miles in size, slightly over 12,000,000 population, with a Croatian seacoast nearly 500 miles in length, and

a diversified economy of agriculture, manufacturing, fishing, shipping and mining. Serbia, quite naturally, was populated principally by people of Serb descent whose religion was Greek Orthodox. Per contra, Jugo-Slavia was populated almost equally by Croats and Serbs, in lesser numbers by Slovenes, and with important minorities of Macedonians, Albanians, Germans and Hungarians. Slovenes are Roman Catholics, and Croats are Roman Catholics and Moslem.

(d) Recognition of the Kingdom of the Serbs, Croats and Slovenes as a New State by the Several European States and the United States.

While admitting, arguendo, the force of appellee's foregoing argument that Jugo-Slavia was a new State, yet it might be said, "True, there appears to have been a considerable change. But did the other States of the world, particularly the United States, take any political acts in relation to this changed situation, and if so what did their acts mean?"

Appellee submits that the established States of the world had a choice of attitudes toward the admittedly changed situation of the Kingdom of the Serbs, Croats and Slovenes of 1918-1919: they might regard the changes as merely an enlargement of Serbia despite their enormity, or they might regard the changes as creating a new State, an International Person with whom they had not previously had formal relations.

If the old States adopted the first attitude, *i. e.,* that the changes had merely enlarged Serbia, then it is submitted that no action—certainly not recognition—was required of them for all had long since recognized Serbia and had existing treaty relations with Serbia.

If, on the other hand, the old States adopted the second attitude, *i. e.,* that the changes had created a new state, then it is submitted that they might have taken several actions toward the new State, namely, recognition, treaty negotiations, etc.

Logically the next step is to examine history and determine what, if any, acts were taken by the old States in relation to the changed situation of the Kingdom of the Serbs, Croats and Slovenes. But, first, at the risk of putting the cart before the horse, the meaning, purpose and mode of recognition of new states are set forth according to recognized authoritative writers on International Law:

Moore, International Law Digest, Vol. I, 1906, page 72:

> "Recognition, says Rivier, is the assurance given to a *new* state that it will be permitted to hold its place and rank, in the character of an independent political organism, in the society of nations. The rights and attributes of sovereignty belong to it independently of all recognition, but it is only after it has been recognized that it is assured of exercising them. Regular political relations exist only between states that reciprocally recognize them. Recognition is therefore useful, *even necessary to the new state.* It is also the constant usage, when a state is formed, to demand it. * * *." (Emphasis added.)

Hackworth, Digest of International Law, Vol. I, 1940, page 161:

> "Recognition may be of new states, or new governments, or of belligerency. It is evidenced, in the case of a new state or government, by an act officially acknowledging the existence of such state or government and *indicating a readiness on the part of the*

recognizing state to enter into formal relations with it. * * *." (Emphasis added.)

"Whether and when recognition will be accorded is a matter within the discretion of the recognizing state. * * * In the United States recognition has in the past usually been accomplished by the President acting solely on his own responsibility, but, occasionally, in the case of new states, it has been accomplished by the President with the cooperation of Congress."

Oppenheim's International Law, Lauterpacht, Vol. I, 1937, pages 120-121:

"* * * Through recognition only and exclusively a State becomes an International Person and a subject of International Law; *and thereby acquires the capacity to enter into diplomatic relations and make treaties with the States which recognize it;* * * *." (Emphasis added.)

Further, on page 122:

"Sec. 72. *Recognition is the act through which it becomes apparent that an old State is ready to deal with a new State as an International Person and a member of the Family of Nations.* Recognition is given either expressly or impliedly. If a new State asks formally for recognition and receives it in a formal declaration of any kind, it receives express recognition. * * *." (Emphasis added.)

Further, on page 139:

"Sec. 75h. (c) As a rule States may acquire new territorial or other rights by unilateral acts, such as discover or annexation, or by treaty, without recognition on the part of third States being required for their validity."

Several points are brought out in the foregoing quotations which are pertinent to the issue herein, namely: (1) that recognition of States is given only to new States, *i. e.,* it is not required to be given to old States changing in name, size or form of government, or acquiring new territorial rights by annexation or treaty; (2) that such recognition necessarily precedes or accompanies diplomatic, treaty and other formal relations between the recognizing and recognized States, *i. e.,* that there do not exist between the recognizing and recognized States any diplomatic or treaty relations until recognition is given expressly or impliedly; and (3) recognition is granted at the discretion of the recognizing State.

(e) Recognition of the Kingdom of the Serbs, Croats and Slovenes as a New State by the Several European States.

Appellee submits that the acts of recognition of Jugo-Slavia detailed hereinafter should be considered not only by themselves but in comparison with acts of recognition extended by the same States during the same period to other new States, Czechoslovakia and Poland, and with the failure of these States to extend recognition to another State—Rumania—which was as greatly enlarged immediately after World War I as appellants and *Amicus Curiae* allege Serbia to have been.

Thus, Great Britain expressly recognized Jugo-Slavia on June 2, and France, on June 6, 1919; and recognition by Germany, Italy, Japan and other powers signatory to the Treaty of Versailles dates from execution of the Treaty on June 28, 1919. Authorities: (History of the Paris Peace Conference, Temperley, Vol. 5, page 157, Recognition of New States since 1919: also Foreign Relations of the United States, Paris Peace Conference, Vol. III, p. 603, and Vol. V, pp. 292-293, 312 and 338.)

In relation to each of these recognitions it should be remembered that these States had each recognized Serbia so long ago as, and continuously since, 1878. It cannot be assumed their acts of recognition were mere empty gestures, for each of them must be presumed to have been familiar with the rules of International Law; and, in fact, each of them has in its history extended many acts of recognition of new States.

Even more interesting are the express acts of recognition of Poland, Czechoslovakia and the Serb-Croat-Slovene State required of the defeated Central powers of World War I in the so-called "political clauses" of peace treaties negotiated with the latter states, and for ready comparison excerpts are set forth of several "political clauses" from the various treaties requiring recognition:

In the Treaty of Versailles with Germany, June 28, 1919:

"Part II—Political Clauses for Europe.

"Section VII. Czecho-Slovak State.

"Article 81. Germany, in conformity with the action already taken by the Allied and Associated Powers, recognizes the complete independence of the Czecho-Slovak State which will include the autonomous territory of the Ruthenians to the south of the Carpathians."

In the Treaty of St. Germaine-Laye with Austria, September 10, 1919:

"Part III—Political Clauses for Europe.

"Section II. Serb-Croat-Slovene State.

"Article 46. Austria, in conformity with the action already taken by the Allied and Associated

Powers, recognizes the complete independence of the Serb-Croat-Slovene State.

"Article 47. Austria renounces, so far as she is concerned, in favour of the Serb-Croat-Slovene State all rights and title over the territories of the former Austro-Hungarian Monarchy situated outside the fronts of Austria as laid down in Article 27, Part II (Frontiers of Austria) and recognized by the present Treaty, or by any Treaties concluded for the purpose of completing the present settlement, as forming part of the Serb-Croat-Slovene State."

Section III. Czecho-Slovak State.

"Article 53. Austria, in conformity with the action already taken by the Allied and Associated Powers, recognizes the complete independence of the Czecho-Slovak State, which will include the autonomous territory of the Ruthenians south of the Carpathians.

"Article 54. Austria renounces, so far as she is concerned in favour of the Czecho-Slovak State * * *."

In the Treaty of Trianon with Hungary, June 4, 1920, Articles 41, 42 and 48, 49 are identical to Articles 46, 47 and 53, 54, respectively, of the Austrian treaty quoted above.

So also were Bulgaria and Turkey required in identical clauses to recognize the Serb-Croat-Slovene State.

It should be noted that these "political clauses" are unequivocal recognitions of a *State,* not a government, and that the United States also was signatory to the treaties.

Also, in the above Treaties with Austria and Hungary, there were "political clauses" relating to Rumania—and quoted below is that from the Austrian treaty:

> "Part III—Political Clauses for Europe.
>
> "Section IV. Roumania.
>
> "Article 59. Austria renounces so far as she is concerned in favour of Roumania all rights and title over such portion of the former duchy of Bukovina as lies within the frontiers of Roumania, which may ultimately be fixed by the principal Allied and Associated Powers."

See also Article 45 of the Treaty with Hungary.

In these treaties there are no "political clauses" of recognition of Rumania. Rumania was a greatly enlarged State as a result of World War I; having in 1914 an area of approximately 50,000 square miles and population of 7,000,000, and in 1919 an area of approximately 110,000 square miles with population of 18,000,000. Thus, if Jugo-Slavia were merely an enlarged Serbia whose growth paralleled that of Rumania, then it may be concluded that only a "political clause" of renunciation to Jugo-Slavia would have been required of Austria and Hungary as given to Rumania.

In brief summary, there is a clear meaning to the fact that the several European States *and the United States* (signatory to each of these treaties) accorded the Serb-Croat-Slovene State a treatment identical to that accorded the admittedly new States of Czechoslovakia and Poland, and did not treat it in the manner accorded Rumania,

admittedly an enlarged State. It is that the Serb-Croat-Slovene State was undoubtedly believed to be, and recognized as, a new State.

In fact, it seems that Jugo-Slavia also considered itself to be a new State, witness excerpt from note of May 12, 1921, from its Foreign Affairs Ministry to the German Embassy stating:

> "Therefore this legal office [of Foreign Affairs] stresses that, since it was not with the old Kingdom of Serbia that peace was made, but with the *new state* of the Serb-Croat-Slovene * * *." [R. p. 62.] (Emphasis added.)

Also in support of the theory that Jugo-Slavia was a new State are found the following European authorities on International Law:

Kaufman, Niemeyers zeitschrift fuer Internationales Recht, in Chap. XXXI, pp. 211-251, observes:

> "* * * The Serb-Croat-Slovene State is a new State. * * *."

Sack, Les Effets des Transfermations des Etate sur * * * leurs obligations * * * Paris, Sirey, 1927, I, p. 3: The Serb-Croat-Slovene State is shown as a new State.

Udina, L'estinizione dell' Impero Austro-Ungarico nel Diritto Internationale, 2d ed., pp. 288, 303, concludes that the Serb-Croat-Slovene State is a new State.

Guggenheim, Beitraege zur Voelkerrecht Lichen Lehre vom Staatenwechael (Staatenzukession), 1925, states:

> "The latest practice of states knows of one undoubted case of complete state discontinuity * * * where the old states disappeared and a new state

arose, *i. e.*, the disappearance of the Kingdom of Serbia (and Montenegro) which was followed by the new-established state of Yugoslavia. Serbia ceased to exist as a subject of international law. * * *."

Temperley, History of the Paris Peace Conference, Vol. 5, Recognition of New States since 1919, p. 157, shows Yugoslavia as a new State.

(f) Recognition of the Serb-Croat-Slovene State by the United States.

The most important guide to this Court in the instant proceeding must be the known acts and statements of the Government of the United States prior to, at and after the creation of the Serb-Croat-Slovene State and the disappearance of Serbia. Thus, appellee treats these at greater length than the acts of the European States.

There is little doubt as to the known international policy of the President, Woodrow Wilson, the Chief Executive of the United States Government, during and after World War I; openly, he advocated the self-determination of peoples as to their government and equally as strongly he opposed the annexation of alien territories and peoples by the victorious Allied and Associated Powers. The decision of the District Court [R. pp. 57-58, 91] took cognizance of such policy and attitude of the United States Government during and after World War I.

That the Chief Executive of the United States was interested in and aware of developments in the Balkans in 1918 leading to the formation of the Serb-Croat-Slovene State is evidenced by the series of public statements and diplomatic notes of the United States State De-

partment and its representatives abroad concerning Serbia and the Serb-Croat-Slovene State in the period January-November 1918, published in Foreign Relations of the United States, 1918, Supp. 1, Vol. I, pages 790-870. Appellee believes that this background formed the basis for the acts of the United States Government detailed hereinafter.

That the American Chief Executive was interested in the proposed relation between Serbia and the then unborn State of the Slovenes, Croats and Serbs is reflected in the following brief despatch found in Foreign Relations U. S., 1918, page 823:

> "The Acting Secretary of State to the Special Agent at Corfu (Dodge)
>
> "Washington, August 7, 1918, 6 p.m.
>
> "Department desires from time to time confidential reports on Serbian Government's position as to character of relation to be established between Serbia and Yugo-Slav portion of Austria-Hungary if latter secure their liberty."

As we know from President Wilson's public statements that he opposed the domination of one people by another, it is a fair assumption from the above message that the President wished to satisfy himself that there was not being proposed or planned the substitution of a Serbian yoke for the Austro-Hungarian yoke then resting upon the Southern Slav people of the latter country; in other words, that the Serbian government had no intent to create a "greater Serbia" by the annexation or absorption of the Southern Slavs of Austria-Hungary if the latter should obtain their freedom.

Thus, the responses of Special Agent (Dodge) to the above request of August 7 are of considerable importance in analyzing the acts of the United States Government toward the Serb-Croat-Slovene State immediately following its formation in December, 1918. Dodge's responses of August 26 and September 13, 1918, reported in Foreign Relations U. S., 1918, pages 828 *et seq.* and 852 *et seq.* were in the record before the District Court, but as not designated in the record on appeal, these despatches are attached hereto for ready reference as Appendices B and C. Very briefly, it may be seen from these reports that according to official spokesmen of Serbia a new State was to be formed pursuant to the Corfu Declaration, that it was formed by a free and equal union, and that it was not to be a state of Serbian hegemony or superiority. The high offices held by the Serbian spokesmen lent credence to their statements and must have also impressed the U. S. State Department.

Thereafter, on October 14, 1918 (prior to the independence declaration of the State of the Slovenes, Croats and Serbs), the Serbian Government requested an American declaration that it favored the freedom of the Southern Slavs of Austria-Hungary and "their union with Serbia in a free and democratic State, such as was provided for in the Declaration of Corfu." Foreign Relations U. S., 1918, 1, I, p. 843.) To this request the United States responded on October 28, 1918, that the "United States has expressed itself freely in support of the right of the Jugo-Slavs to be entirely freed from Austrian domination and that it does not feel that it can go further in declaring a policy which manifestly depends upon the self-determination of the peoples involved." In short, the United

States was not going to favor or sponsor any cut and dried arrangement for a union proposed by one state in advance of self-determination by other states and peoples involved, which might smack of annexation or absorption by an existing State requesting such favor.

Then, as we have seen, followed the declaration of the independent State of the Slovenes, Croats and Serbs, October 29, 1918, Serbian recognition of such State, November 8, Serbian request that the United States recognize such State, November 11, and the declarations of three States, the State of the Slovenes, Croats and Serbs, November 24, Montenegro, November 26, and Serbia, December 1, for union into a single State, and the proclamation of the Kingdom of the Serbs, Croats and Slovenes.

The new State asked for recognition by the United States, and recognition was given by public statement of the Secretary of State (Lansing) at Paris, February 7, 1919. The telegram from the Commission to Negotiate Peace to Acting Secretary of State was as follows:

860h.01/26: Telegram

The Commission to Negotiate Peace to the Acting Secretary of State

Paris, February 6, 1919, 4 p.m.

[Received February 7, 1.32 a.m.]

622. The Secretary of State will give out on February 7th the following statement in regard to the union of the Jugo-Slav peoples, which you may give out to the press immediately:

"On May 29, 1918, the Government of the United States expressed its sympathy for the nationalistic

aspirations of the Jugo Slav race and on June 28 declared that all branches of the Slavish race should be completely freed from German and Austrian rule. After having achieved their freedom from foreign oppression the Jugo-Slav[s] formerly under Austria-Hungarian rule on various occasions expressed the desire to unite with the Kingdom of Serbia. The Servian Government on its part has publicly and officially accepted the union of the Serb, Croat and Slovene peoples. The Government of the United States, therefore, welcome the union while recognizing that the final settlement of territorial frontiers must be left to the Peace Conference for determination according to desires of the peoples concerned."

All this statement has been transmitted Mr. Trumbitch [106] and telegraphed to Dodge at Belgrade.

Am[erican] Mission

[R. p. 89.]

Applying the rules of International Law set forth in this sub-heading, which it must be assumed that the United States Government knew, what did this act of recognition signify? First, that the United States recognized that the Kingdom of the Serbs, Croats and Slovenes was a new State. No other logical conclusion can be drawn from the act of recognition, for if the United States had believed the Serb-Croat-Slovene State to be an enlarged Serbia, no recognition would have been necessary as the United States had continuously recognized Serbia, at least since 1881. Second, that the United States was ready to enter into diplomatic, treaty and other relations with the new State, ergo, that it had no such relations then with the Serb-Croat-Slovene State.

But appellee is puzzled at the attempts of appellant and *amicus curiae* to ignore or minimize this act of recognition, which according to the foremost writers on International Law is a most important one. The treatment accorded United States' recognition of the Serb-Croat-Slovene State by appellants and *amicus curiae* suggests that perhaps they dispute the fact it was recognition of a new State; if so, appellee believes they will find no American authorities, including the United States Government itself, in support of their position. In support of its position appellee cites the following findings of American authorities:

Hackworth, Digest of International Law, Volume I, Chapter III, "Recognition" (broken down, among other categories, to "Recognition of New States," pp. 195-222, and to "Recognition of New Governments," pp. 222-318), and the American recognition of the Serb-Croat-Slovene State in 1919 is placed squarely in the category "Recognition of New States," pages 219-222.

Also, Hyde, International Law Chiefly as Interpreted and Applied by the United States, Volume I, Second Revised Edition 1945, page 155:

> "The Department of State on April 7, 1924, found occasion to declare and its records disclosed the following information relative to the recognition by the Government of the United States of the following States:
>
> " 'The Kingdom of the Serbs, Croats and Slovenes (Yugoslavia): The Government of the United States recognized the Government of the Kingdom of the Serbs, Croats and Slovenes on February 7, 1919. Announcement was made of this recognition by the Secretary of State of the United States at

> Paris on that date, while he was a member of the American Commission to Negotiate Peace; and subsequently in a note of February 10, 1919, addressed to the Minister of the Kingdom of Serbs, Croats and Slovenes at this capital, the Acting Secretary of State recognized the Legation of Serbia as the Legation of the Serbs, Croats and Slovenes.'
>
> * * * * * * * *
>
> "* * * Communication to Mr. W. C. Hart, April 7, 1924."

Finally, Publication No. 661, Department of State, Foreign Relations of the United States, 1919, Volume II, pages 892-900, Recognition of Yugoslavia [see R. pp. 83-90]; compare also Recognition of Czechoslavkia, Foreign Relations U. S. *id.,* page 85, and of Poland, page 741.

Appellee cannot pass without taking opportunity here to correct the misunderstanding of appellants and *amicus curiae* as to the importance of the Acting Secretary of State's note of February 10, 1919, to the Jugo-Slav Minister (not the *Serbian* Legation as incorrectly stated by appellants in their brief, p. 30). Appellants (Br. p. 30) state incorrectly that said note of February 10, 1919, is "even more significant as it constituted the official recognition by the United States Government of the union with Serbia of the provinces within the former Austro-Hungarian Empire and Montenegro," for as the United States Government has said itself in the preceding quotation from Hyde, recognition of the Kingdom of the Serbs, Croats and Slovenes was made by the *Secretary of State February 7,* 1919, at Paris, and the note of the *Acting Secretary of State* on February 10, only recognized the

Serb-Croat-Slovene Legation. This fits squarely with the rules of International Law which state that recognition precedes diplomatic relations. Both *amicus curiae* and appellants have laid considerable stress on the language of the note of the Acting Secretary of State that union was "to Serbia," but neither the words nor the opinion of an underling, even if so intended, can modify those by the Secretary of State, the official spokesman in foreign affairs, which quite properly did not describe a union "to Serbia," and thus the February 10 note, other than recognizing the Legation of the Kingdom of the Serbs, Croats and Slovenes is of no legal consequence. As to the effect of American recognition of the Serb-Croat-Slovene Union upon the former Kingdom of Serbia, appellee might well be content to rest upon the words of Hyde, International Law etc., *id.,* pages 122-123:

"Unions of States

"Sec. 31. Where International Personality of Members is Not Relinquished. States many and oftentimes do unite. In such event it becomes a matter of international concern whether any constituent member of the new State has retained its international personality by not relinquishing wholly its right to participate in foreign affairs. If such be the case, the union, however, described, is in a strict sense a group of states of international law each of which remains to be regarded as a distinct person in the family of nations. Unions of such a kind have appeared in various forms. * * * The German Empire under the constitution of April 16, 1871, is illustrative. While the several States comprising it retained rights to enable them technically to preserve their individual membership in the family of

nations, to the outside world it was the German Empire—the Bundesstaat—which was of chief significance."

Pages 126-127:

"Sec. 32. Where International Personality of Members is Relinquished. *The terms of a union of States may mark the relinquishment by the members thereof of the privilege of dealing with the outside world, or of being held out to it as distinctive entities in whose behalf as such foreign relations are conducted* by an appropriate instrumentality. In such case the union becomes a person or State of international law of which the composition is a matter of unconcern to foreign powers. *They recognize the completeness of the merger,* and while it lasts, *necessarily regard as non-existent the former States which surrendered their international personalities.*
* * *

"As a result of the World War the Serb, Croat and Slovene people of the former Austro-Hungarian Monarchy united of their own free will with Serbia in a permanent union *for the purpose of forming 'a single sovereign independent State under the title of the Kingdom of the Serbs, Croats and Slovenes.'*

"It suffices to observe that quite apart from the appropriateness of the accepted description of such types of unions, the family of nations is concerned solely with the result effected, namely, *the single political entity asserting an international personality which has supplanted for the purposes of statehood the several constituents which were thus welded together.*"

Appellee urges that clearly implied in American recognition of the Kingdom of the Serbs, Croats and Slovenes

as a new State is American recognition of the extinction, or non-existence, of Serbia and the other two states which united to form the Kingdom of the Serbs, Croats and Slovenes and this position is supported fully by the above-quoted language of Hyde, an American authority interpreting international law from the viewpoint of the United States.

III.

A Result of Serbia's Extinction Was the Voidance of Her Treaties With the United States.

Hence, upon Serbia's extinction and recognition thereof by the United States, and applying the rules of International Law as set forth in Point I hereof, the treaties between the United States and Serbia were void, and they could no more be made valid and binding between the United States and the Serb-Croat-Slovene State *by executive decree* than could treaties with the State of Slovenes, Croats and Serbs, also a component of the Kingdom of the Serbs, Croats and Slovenes had such treaties then existed.

Not only did the United States by its clear and unequivocal recognition of the Serb-Croat-Slovene State recognize also the extinction of Serbia, but by other political acts closely following in time the United States recognized the non-existence of treaty relations with the new Serb-Croat-Slovene State.

The first of such acts was the negotiation with the new State of a treaty which, had it been ratified, would have brought into force between the United States and the Kingdom of the Serbs, Croats and Slovenes the treaties with former Serbia *in a constitutional manner.* This treaty

is identified as the Treaty of St. Germain-en-laye, executed September 10, 1919 (III Malloy, Treaties, Conventions, International Acts, etc., between the United States and Other Powers, 1910-1923, pp. 3731 ff.).

Article 12 of such Treaty provided:

> "Pending the conclusion of new treaties or conventions, all treaties, conventions, agreements and obligations between Serbia, on the one hand, and any of the Principal Allied and Associated Powers, on the other hand, which were in force on the 1st August, 1914, or which have since been entered into, shall *ipso facto* be binding upon the Serb-Croat-Slovene State."

Here was a clear attempt to provide interim treaty relations for the new State until new treaties, taking into consideration the tremendous differences between the Kingdom of the Serbs, Croats and Slovenes and Serbia, could be negotiated. Appellant and *amicus curiae* would persuade the Court that the Serbian treaties were in effect between the Allied and Associated powers and the Kingdom of the Serbs, Croats and Slovenes regardless of the Treaty of St. Germain, and that the above article was merely declaratory of an existing fact and without legal significance —an unnecessary act. But such an interpretation assigns no purpose at all to the opening clause of the article, "Pending the conclusion of new treaties or conventions," nor does it recognize the future sense of the principal verb of the article, "shall be binding."

Had the Serbian treaties been effective without break by the extinction of Serbia, then quite naturally they would have continued effective until expiring of themselves or replaced by new treaties, thus the "Pending

* * *" clause would have been without purpose or unnecessary—a manner of doing things which appellant and *amicus curiae* have seemingly several times assigned to the States involved herein. It is urged that the opening clause was based on a then present and future situation recognized by the treaty negotiators, *i. e.*, that there were no treaty relations existing between the Allied and Associated powers and the Serb-Croat-Slovene State, and the contemplation that there would be early future treaty negotiations between such States, and a desire to bridge such gap in treaty relations. Thus, the principal verb, "shall be binding," with its sense *in futuro* from the time of effectiveness of the treaty, carries out perfectly the purpose and intent of the treaty negotiators in placing Article 12 in the Treaty of St. Germain.

Therefore, when the United States Senate did not ratify the Treaty of St. Germain (it not having been presented to the Senate), the treaty never became constitutionally effective between the United States and the Serb-Croat-Slovene State, and their treaty relations were left just as they were when the unratified treaty was negotiated—non-existent—a state of affairs which was recognized by the United States when the treaty was negotiated.

By a comparison of the St. Germain treaty with another treaty negotiated by the United States during the same period there is found a second act of the United States from which it may be inferred that the purpose of Article 12 was to bridge a gap in treaty relations with the Serb-Croat-Slovene State.

If any reason is assigned by appellant and *amicus curiae* for the incorporation of Article 12 into the Treaty

of St. Germain, it is that Serbia had so greatly grown that it was felt necessary to affirm the existence of treaties with the state in its enlarged form. By the same reasoning we should find a similar clause in a similar treaty with Rumania—a State equally as enlarged by the same circumstances of World War I. We do find such a treaty—the Treaty of Paris, December 9, 1919, between the United States and other Allied powers, on the one hand, and Rumania, on the other, the text of which is set forth in III Malloy, Treaties, Conventions, International Acts, etc., pages 3724 ff. Comparing with the Treaty of St. Germain, it will be noted that the Articles of the two treaties are identical with two exceptions—one unimportant to this case, Article 7 of the Rumanian treaty protecting the Jews, which was not in the Serb-Croat-Slovene treaty—and one most important to this case, Article 12 of the Serb-Croat-Slovene treaty providing interim treaty relations, *which was completely omitted from the Rumanian treaty.* The simple reason is that Rumania was truly an enlarged State, and the treaty negotiators, being fully aware of the applicable principles of International Law, knew that it was not necessary to incorporate in the Rumanian treaty an article providing interim treaty relations because their treaty relations with Rumania had not been impaired by the enlargement of the Rumanian state.

In passing, it might be noted that the preamble of Rumanian treaty refers to "large accession of territory to the Kingdom of Rumania, just as appellant and *amicus curiae* would interpret the preamble of the Serb-Croat-Slovene Treaty of St. Germain, whereas the latter preamble in reality refers first to the enlargement of Serbia by annexa-

tions of territory resulting from the Balkan Wars of 1912-1913, and then refers to a "permanent union for the purpose of forming a single sovereign independent State" to which "the Prince Regent of Serbia and the Serbian Government have agreed," clearly distinguishing Rumania as an "enlarged State" and the Kingdom of the Serbs, Croats and Slovenes as a "new State."

Appellee asserts that herein are the acts or "political decisions" of the United States by which it recognized in 1919 the voidance of the Serbian treaties.

IV.
Rebuttal.

1. The Creation of Italy Compared With the Creation of the Serb-Croat-Slovene State.

Appellant (Br. pp. 11-12) and *amicus curiae* (Br. pp. 11-13) contend that the union of a number of Italian States with Sardinia to form the Kingdom of Italy presents a "striking similarity" to the present case, that it was the position of the Italian Government that only the Sardinian treaties were in effect between the United States and Italy, but appellant and *amicus curiae* are strangely silent as to the expressed position of the United States Government, naturally the first authority for the United States Courts, as to the effect of Italy's creation upon American treaties—particularly in view of source material so readily available to *amicus curiae*.

First, it is pointed out that the Italian Kingdom was not formed by the *voluntary* union of the several independent states, but was formed as the result of wars involving the several Italian states, culminated by Garibaldi's conquest of the Kingdom of the Two Sicilies in behalf

of Sardinia. In contrast with the instant situation, Serbia was not at war with either Montenegro or the State of the Slovenes, Croats and Serbs. Further, it is clearly recognized in the concluding deduction of Harvard Research into the Law of Treaties, the authority for both appellant and *amicus curiae,* that "the case of the formation of the Italian Kingdom is that when a State enlarges its territorial domain *by the annexation of other states,* its treaties continue to bind.

But even then the United States apparently did not like the idea of annexation, a dislike publicly proclaimed by President Wilson. At the time of the formation of Italy in 1861, the United States had a treaty of commerce (since 1838) with the Kingdom of Sardinia (2 Malloy, Treaties, Conventions, etc., p. 1603) and a treaty of commerce with the Kingdom of the Two Sicilies (since 1855). The Italian Government maintained that only the Sardinian treaty was effective and binding upon new Italy. Let the following excerpt speak for the position of the United States:

Diplomatic Correspondence and Foreign Relations of the United States, 1864, Part 4, pages 327-328:

> "Mr. Seward [Secretary of State] to Mr. Marsh [Minister to Italy]
>
> "Department of State
> "Washington, June 15, 1864
>
> "No. 102
> "* * *.
>
> "Pursuant to the request made by you at the instance of the Secretary-General of the [Italian] Ministry of Foreign Affairs, the President instructs me to transmit the accompanying full power, authorizing

you to negotiate with His Majesty's Government a new treaty of commerce to take the place of the *existing treaties between the United States and the kingdoms of Sardinia and the Two Sicilies.* * * *." (Emphasis added.)

Thus, even in a clear case of annexation the United States did not recognize the treaties of the annexing State as binding upon the annexed State, and so, without further words, the comparison of the formation of Italy with that of Yugoslavia fails completely.

2. The Opinion of the Secretary of State, June 4, 1921, That the Serbian Treaties Were Applicable to Yugoslavia Was a Misapprehension of Prior Political Decisions of the United States Government.

We come now to Appendix 2 of *Amicus Curiae* Brief, the opinion of F. K. Nielsen, Solicitor, State Department, May 31, 1921, which was not before the District Court. This memorandum apparently formed the basis for the communication of the Secretary of State, June 4, 1921, to a private law firm in New York, expressing the State Department's opinion that the Serbian treaties with the United States were applicable to the territory of the Serb-Croat-Slovene State acquired from Austria-Hungary. This communication was considered by the District Court [R. pp. 91-92].

It is urged that the basic premise of Solicitor Nielsen's memorandum, *i. e.*, "it may be said that Serbia absorbed the territories which came to her as a result of the war," is a misapprehension directly antithetical to and incompatible with the position and political decisions of the United States taken in 1919, *i. e.*, recognition of and treaty negotiation with the State of the Serbs, Croats

and Slovenes as discussed at length in Point III of Argument.

It has been pointed out repeatedly that had the United States Government in 1919 believed that the union forming the Kingdom of the Serbs, Croats and Slovenes was an act of Serbia absorbing or annexing territories, then, in accord with well-defined principles of International Law, the United States would *not* have recognized the Kingdom of the Serbs, Croats and Slovenes as a new state—an act which, however, the United States did take, and which was followed by all other allied and associated powers. Thus the Solicitor of the State Department in 1921—nearly two and a half years later—attempts by a departmental memorandum to disregard the political decisions of the United States publicly taken and widely recognized in 1919.

Further, the language of the public recognition of the Serb-Croat-Slovene State given by the United States Secretary of State, February 7, 1919, and the language to the preamble to the Treaty of St. Germain, September 10, 1919, between, among others, the United States and the Serb-Croat-Slovene State, do not support the basic premise of Solicitor Nielsen's memorandum of May 31, 1921, as may be seen from the following quotations:

From the public announcement of recognition of the Serb-Croat-Slovene State by the Secretary of State at Paris, February 7, 1919 [R. p. 89]:

> "* * * *After having achieved their freedom from foreign oppression* the Jugo Slav[s] formerly under Autria-Hungarian rule on various occasions expressed the desire to unite with the Kingdom of Serbia. The

Serbian Government on its part has publicly and officially *accepted the union* of the Serb, Croat and Slovene peoples. * * *."

From the preamble to the Treaty of St. Germain with the Serb-Croat-Slovene State:

"Whereas the Serb, Croat and Slovene peoples of the former Austro-Hungarian Monarchy have of their own free will determined to unite with Serbia in a permanent union *for the purpose of forming a single sovereign independent State under the title of* the Kingdom of the Serbs, Croats and Slovenes, and

"Whereas *the Prince Regent of Serbia and the Serbian Government have agreed to this union, and in consequence the Kingdom of the Serbs, Croats and Slovenes has been constituted* * * *."

The United States specifically recognized that the Southern Slavs of Austria-Hungary had achieved their freedom from the domination of one people, and American policy in opposition to annexations or absorptions by victorious powers of World War I was well known. But the opinion of Solicitor Nielsen would hold that the United States sanctioned a change of dominations—from the Austro-Hungarian to the Serb—for the freed Southern Slavs, a position which the United States opposed and, upon basis of its searching inquiry as to the intentions of Serbia in the proposed union (see pp. 25-30 of this brief), a position which the United States did not take.

Then in the first paragraph of the preamble it is noted that the *express purpose* of the union was *to form a single sovereign independent state.* By this language alone, one realizes that it could not have been contemplated by the contracting parties that the union was an absorption or

annexation by Serbia, *for Serbia had been for forty years a* "single sovereign independent State" and had she been absorbing or annexing territory it would have been unnecessary to form such a state as Serbia was already. Thus the express purpose of the union must have been to form *another* "single sovereign independent State"—not Serbia.

And to this proposition, both in the United States recognition of the Kingdom of the Serbs, Croats and Slovenes and in the treaty preamble, there is found the appropriate response for Serbia—Serbia "accepted" or "agreed to this Union," *i. e.,* to the formation of a new "single sovereign independent State"—an acceptance or agreement which would properly be given by a state in the process of extinguishing its own international personality. In contrast it would be unnecessary indeed that an absorbing or annexing state "accept" or "agree to" its own act of absorption or annexation. Thus by such quoted language the United States and other world states emphasized the fact that a new state—the Kingdom of the Serbs, Croats and Slovenes—was created and that Serbia had accepted this situation.

3. Distinguishing Terlinden v. Ames, 184 U. S. 270.

Throughout this proceeding the subject case has been held forth as a prohibition to judicial consideration of the issue arising herein. But appellee urges that there are the following fundamental differences between the creation of the North German Union and the German Empire (discussed at length by the Supreme Court) and the creation of the Serb-Croat-Slovene State and Yugoslavia, and thus between *Terlinden v. Ames, supra,* and the instant case.

In creating the North German Union and the German Empire it is clearly a fact that the German states did not give up their independent existences to the extent of stripping themselves of power to enter into relations with foreign states; "* * *, those [German] states are not hindered from independently regulating extradition by agreements with foreign states, * * *." (Moore, International Law, Vol. 5, p. 355; *Terlinden v. Ames, supra,* p. 286.) Nor did, for example, the State of Prussia lose its international identity as its King, who became the Emperor of Germany, officially titled himself as the King of Prussia in negotiating a number of treaties and conventions with the United States after 1871 (Malloy, Treaties, Conventions, International Acts, etc., Vol. I, p. 550).

This may be contrasted with Serbia's complete loss of identity and disappearance as set forth heretofore under Point II of Argument.

There is this second important distinction. Following the formation of the North German Union in 1866, that state and the United States concluded a treaty in 1868, a provision of which "extended to all the States of the North German Union" the extradition convention of 1852 between the United States and Prussia and other German States. This treaty was duly ratified in accord with our Constitution. Appellee submits that Article 12, Treaty of St. Germain between the United States and the Serb-Croat-Slovene State, hereinbefore discussed, was intended for a similar purpose, and that non-ratification of the latter treaty marks a second important distinction between *Terlinden v. Ames, supra,* and the instant case.

A third distinction brings us also to an important misquotation of *Terlinden v. Ames, supra,* pp. 290-291, by appellant's counsel, a misquotation which he has now made for the third time in these proceedings and to which error his attention has been previously called. Not only is the misquotation extremely pertinent to the issue arising here, but it has been emphasized by italicization. It is found in the second paragraph of the quotation appearing on page 45 of Appellants' Brief, reading as misquoted:

> ". . . *It cannot be successfully contended that the courts could properly intervene on the ground that the treaty under which both governments had proceeded had terminated by reason of the adoption of the German Empire, notwithstanding the judgment of both governments to the contrary.*"

It seems clear that appellant is attempting to draw a parallel between the "adoption of the German Empire" in *Terlinden v. Ames, supra,* and the proclamation of union forming Jugo-Slavia in the instant case, and to persuade this Court that the quoted language of the Supreme Court in relation thereto should be controlling.

But let us see how the Supreme Court's language, correctly quoted, reads:

> ". . . it cannot be successfully contended that the courts could properly intervene on the ground that the treaty under which both governments had proceeded had terminated by reason of the adoption OF THE CONSTITUTION of the German Empire, notwithstanding the judgment of both governments to the contrary." (Emphasis ours.)

Thus we find that the most important words of the quotation have been left out, and the quotation becomes of

distinctive consequence in relation to the present issue for the simple reason that appellee has not raised the issue of the Constitution of the Serb-Croat-Slovene State terminating the validity of Serbian treaties, whereas the effect of the German Constitution was an important issue in *Terlinden v. Ames.*

This brings us naturally to appellants' quotation from *Terlinden v. Ames* (Br. p. 44), which he describes as fitting the instant case perfectly. But appellee has not called upon the courts of this country to "adjudicate the correctness of the conclusions" of Yugoslavia as to its powers under its Constitution or otherwise, but has called upon the courts of this country to determine whether a treaty of extradition has been lawfully concluded with Yugoslavia, provoking the further question whether by reason of recognized rules of international law the treaties with Serbia were voided and such voidance was recognized in political decisions taken by the United States in 1919.

4. The Debts of Serbia Were Normally Assumed by the Serb-Croat-Slovene State.

Amicus curiae has attempted to find in the action of the United States Congress in 1928 upon Serbian and Jugo-Slavia indebtedness an approval of its position, but the rule of International Law, expressed succinctly in the following quotation, suggests that such settlement of indebtedness was but a normal procedure:

> I Hackworth, Digest of International Law, page 540: "* * * Where the identity of the parent state is destroyed, the conquering or annexing power *or the new state* becomes heir to the debts of the destroyed country."

This parallels a rule of common business practice: If one takes over the assets of another (Jugo-Slavia took over the assets of Serbia), one must assume his liabilities (Jugo-Slavia assumed the debts of Serbia). Jugo-Slavia took over also the assets of Montenegro and the State of the Slovenes, Croats and Serbs, and assumed as well their debts (that of the latter being a portion of the Austro-Hungarian debt as prorated in the several peace treaties).

Thus the action of the United States Congress in settlement of the indebtedness of Jugo-Slavia has no significance in relation to treaties between the two states.

5. "Opinions of the United States Courts."

Amicus curiae (Br. p. 38 ff.) and appellant (Br. pp. 54-55) have quoted the decisions of several state courts in support of their position that the Serbian treaties are effective between the United States and Yugoslavia.

A cursory examination of the language quoted from the decision in *Lukich v. Department of Labor and Industries,* 176 Wash. 221, 22 P. 2d 388 (1934), reveals that it was *"conceded* * * * that the [Serbian] convention above referred to is now in full force and effect between Yugoslavia and the United States," from which concession it may be seen that there was no determination upon the merits of the issue, and thus is of no value in determining the issue raised herein.

In language quoted from *Urbus v. State Compensation Commissioner,* 113 W. Va. 563, 169 S. E. 164 (1933), it is at once apparent that the Court labored under the misapprehension that either the Treaty of St. Germain was ratified and in force between the United States and the Serb-Croat-Slovene State or that the mere signing of

the treaty bound the United States to Article 12 thereof which would have revived the Serbian treaties. This fundamental error of that Court destroys the comparative value of that case in relation to the present issue.

Another case quoted, *Olijan v. Lublin,* 50 N. E. 2d 264 (1943), does not pretend to determine the issue of validity of treaties.

The case of *In re Thomas,* 12 Blatchf. 370, 23 Fed. Cas. 927, involves a point similar to that in *Terlinden v. Ames, supra, i. e.,* that Bavaria continued its international existence as a state despite the formation of the North German Union and the German Empire. Indeed, after the formation in 1866 of the North German Union, the United States and Bavaria in 1868 negotiated and concluded a Treaty of Naturalization (1 Malloy, Treaties, Conventions, etc., p. 60), Article 3 of which expressly extended the life of an earlier extradition convention between these two states which was the subject of inquiry in *In re Thomas, supra.*

Conclusion.

It is respectfully submitted that the decision of the United States District Court granting the writ of *habeas corpus* be affirmed.

Respectfully submitted,

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Attorneys for Appellee.

APPENDIX "A."

Excerpted from

THE HISTORY OF THE PEACE CONFERENCE OF PARIS

Vol. 5.

by H. W. Temperley

pages 393-396, incl.

THE MANIFESTO (PACT) OF CORFU[1]

At the conference of the members of the late (Serbian) Coalition Cabinet and those of the present Cabinet, and also the representatives of the Jugo-Slav Committee in London, all of whom have hitherto been working on parallel lines, views have been exchanged in collaboration with the president of the Skupstina, on all questions concerning the life of the Serbs, Croats, and Slovenes in their joint future state.

We are happy in being able once more on this occasion to point to the completely unanimity of all parties concerned.

In the first place, the representatives of the Serbs, Croats, and Slovenes declare anew and most categorically that our people constitutes but one nation, and that it is one in blood, one by the spoken and written language, by the continuity and unity of the territory in which it lives, and finally in virtue of the common and vital interests of its national existence and the general development of its moral and material life.

The idea of its national unity has never suffered extinction, although all the intellectual forces of its enemy were directed aganist its unification, its liberty and its

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[1]The Jugo-Slav Movement, by R. J. Koerner, pp. 100-5.

national existence. Divided between several states our nation is in Austria-Hungary alone split up into eleven provincial administrations, coming under thirteen legislative bodies. The feeling of national unity, together with the spirit of liberty and independence, have supported it in the never-ending struggles of centuries against the Turks in the East and against the Germans and the Magyars in the West.

Being numerically inferior to its enemies in the East and West, it was impossible for it to safeguard its unity as a nation and a State, its liberty and its independence against the brutal maxim of "might goes before right" militating against it both East and West.

But the moment has come when our people is no longer isolated. The war imposed by German militarism upon Russia, upon France and upon England for the defense of their honour as well as for the liberty and independence of small nations, has developed into a struggle for the liberty of the World and the Triumph of Right over Might. All nations which love liberty and independence have allied themselves together for their common defense, to save civilization and liberty at the cost of every sacrifice, to establish a new international order based upon justice and upon the right of every nation to dispose of itself and so organize its independent life; finally to establish a durable peace consecrated to the progress and development of humanity and to secure the world against a catastrophe similar to that which the conquering lust of German Imperialism has provoked.

To noble France, who has proclaimed the liberty of nations, and to England, the hearth of liberty, the Great American Republic and the new, free and democratic

Russia have joined themselves in proclaiming as their principal war aim the triumph of liberty and democracy and as a basis of the new international order the right of free self-determination for every nation.

Our nation of the three names, which has been the greatest sufferer under brute force and injustice and which has made the greatest sacrifices to preserve its right of self-determination, has with enthusiasm accepted this sublime principle put forward as the chief aim of this atrocious war, provoked by the violation of this very principle.

The authorized representatives of the Serbs, Croats, and Slovenes, in declaring that it is the desire of our people to free itself from every foreign yoke and to constitute itself a free, national and independent State, a desire based on the principle that every nation has the right to decide its own destiny, are agreed in judging that this State should be founded on the following modern and democratic principles:

(1) The State of the Serbs, Croats, and Slovenes, who are also known as the Southern Slavs or Jugo-Slavs, will be a free and independent kingdom, with indivisible territory and unity of allegiance. It will be a constitutional, democratic and parliamentary monarchy under the Karageorgevitch Dynasty, which has always shared the ideas and the feelings of the nation, placing liberty and the national will above all else.

(2) This State will be named "The Kingdom of the Serbs, Croats, and Slovenes." And the style of the Sovereign will be "King of the Serbs, Croats, and Slovenes."

(3) The State will have a single coat-of-arms, a single flag, and a single crown. These emblems will be composed

of the present existing emblems. The unity of the State will be symbolized by the coat-of-arms and the flag of the Kingdom.

(4) The special Serb, Croat, and Slovene flags rank equally and may be freely hoisted on all occasions. The special coat-of-arms may be used with equal freedom.

(5) The three national designations—Serbs, Croats, and Slovenes—are equal before the law throughout the territory of the Kingdom, and every one may use them freely upon all occasions of public life and in dealing with the authorities.

(6) The two alphabets, the Cyrillic and the Latin, also rank equally, and every one may use them free throughout the territory of the Kingdom. The royal authorities and the local self-governing authorities have both the right and the duty to employ both alphabets in accordance with the wishes of the citizens.

(7) All recognized religions may be freely and publicly exercised. The Orthodox, Roman Catholic and Mussulman faiths, which are those chiefly professed by our national, shall rank equally and enjoy equal rights with regard to the State.

In consideration of these principles the legislature will take special care to safeguard religious concord in conformity with the spirit and tradition of our whole nation.

(8) The calendar will be unified as soon as possible.

(9) The territory of the Kingdom of the Serbs, Croats and Slovenes will include all the territory inhabited com-

pactly and in territorial continuity by our nation of the three names. It cannot be mutilated without detriment to the vital interests of the community.

Our nation demands nothing that belongs to others. It demands only what is its own. It desired to free itself and to achieve its unity. Therefore it consciously and firmly refuses every partial solution of the problem of its national liberation and unification. It puts forward the proposition of its deliverance from Austro-Hungarian domination and its union with Serbia and Montenegro in a single State forming an indivisible whole.

In accordance with the right of self-determination of peoples, no part of this territorial totality may without infringement of justice be detached and incorporated with some other State without the consent of the nation itself.

(10) In the interests of freedom and of the equal right of all nations, the Adriatic shall be free and open to each and all.

(11) All citizens throughout the territory of the Kingdom shall be equal and enjoy the same rights with regard to the State and before the law.

(12) The election of the Deputies to the National representative body shall be by universal suffrage, with equal, direct and secret ballot. The same shall apply to the elections in the Communes and other administrative units. Elections will take place in each Commune.

(13) The Constitution, to be established after the conclusion of peace by a Constituent Assembly elected by

universal suffrage, with direct and secret ballot, will be the basis of the entire life of the State; it will be the source and the consummation of all authority and of all rights by which the entire life of the nation will be regulated.

The Constitution will provide the nation with the possibility of exercising its special energies in local autonomies delimited by natural, social and economic condition.

The Constitution must be passed in its entirety by a numerically defined majority in the Constituent Assembly.

The nation of the Serbs, Croats and Slovenes, thus unified, will form a state of about twelve million inhabitants. This State will be the guarantee for their independence and national development, and their national and intellectual progress in general, a mighty bulwark against the German thrust, an inseparable ally of all the civilized nations and states which have proclaimed the principle of right and liberty and that of international justice. It will be a worthy member of the new Community of Nations.

Drawn up at Corfu, July 7/20, 1917.

The Prime Minister of the Kingdom of Serbia and Minister for Foreign Affairs.

(Sgd.) Nikola P. Pashitch

The President of the Jugo-Slav Committee.

(Sgd.) Dr. Ante Trumbic

Advocate, Deputy and Leader of the Croatian National Party in the Dalmatian Diet, late Mayor of Split (Spalato), late Deputy for the District of Zadar (Zara) in the Austrian Parliament.

APPENDIX "B".

The Special Agent at Corfu (Dodge) to the Secretary of State.

No. 107 Corfu, August 26, 1918.
(Received October 8)

Sir: I have the honor to acknowledge the receipt, late on the 8th instant, of your telegram of the 7th instant, 6 p. m., informing me that confidential reports were desired by the Department from time to time regarding the position of the Serbian Government as to the character of the relation to be established between Servia and the Yugo-Slav provinces of Austria-Hungary in the event that the latter obtained their freedom.

Such reports will be furnished as desired. I may mention that during my residence here I have heard and seen in the Serbian and Yugo-Slav press little as to the details of this matter, the broad outlines of which are laid down in the so-called "Declaration of Corfu," the text and a translation of which were enclosed in my despatch No. 2 of July 27, 1917. The members of the Government and other Serbs with whom I have talked upon this subject always assume that the constitution of the desired Yugo-Slav state will be based upon the principles laid down in this declaration. Unfortunately at present several of the principal members of the Government, including Mr. Pashitch, are absent from Corfu and expecting to remain away for some time. I have, however, taken advantage of my recent trip to Salonica (to be reported in a later despatch) during which I was constantly with Mr. Hintchitch, Minister of Public Works, and Mr. Gavriolevitch, now in charge of the Foreign Office, to ascertain from them what I could as to this matter. In so doing I have

of course made no mention of the Department's desire. The following is the substance of what I learned:

Mr. Nintchitch: The character of the relation to be established between Serbia and the Yugo-Slav populations of Austria-Hungary is determined in its outlines by the Act of Corfu which declares that the new state shall be a free democracy in which all the citizens shall be equal and having equal rights before the state and the law. It also prescribes that all elections whether national, departmental or communal shall be by universal, equal, direct and secret ballot. This act was signed by Mr. Pashitch, representing the Serbian Government, and by Dr. Ante Trumbitch, representing the other Yugo-Slav peoples. It was drafted at conferences at which there took part for Serbia, in addition to Mr. Pashitch, representatives of the principal other Serbian political parties and, in addition to Doctor Trumbitch, who is a Dalmatian, two other members of the Yugo-Slav Committee, one a Slovene and the other a Croatian. All the members of the conference unanimously approved of the act. Its text had immediately been published in Austria-Hungary and in Germany and became well-known to the Austro-Hungarian Yugo-Slav and, so far as could be ascertained, won the approval of a very large majority of them. Of course, owing to the strict censorship and the difficulty of direct communication with these Yugo-Slav as a whole, their sentiments could not be ascertained as exactly as they could in normal conditions. Nevertheless enough was known to make Mr. Nintchitch feel convinced that a very large majority of

the Austro-Hungarian Yugo-Slav enthusiastically supported the act. Yugo-Slav abroad in Allied or neutral countries had also shown clearly their entire approval, including those in the United States.

The act only attempted to determine the broad outlines of the future government, as it had been considered unwise to go into details both because the members of the conference might not in that case be able to agree upon them unanimously and because such details might have caused differences of opinion outside the conference leading to discussion which in the present circumstances it was most important to avoid. Further the conference, which was not an elected body and was only in a sense representative, it being impossible to elect a truly representative body at the time, felt that it should not go beyond the outlines which all were practically certain to accept or attempt to bind the Yugo-Slav people as to details.

For the same reason and as freedom of expression was denied to the Yugo-Slavs in Austria-Hungary, it had been considered best to discourage any discussion of the details of the future government in the Serbian and Yugo-Slav press abroad. Very little such discussion had therefore appeared.

According to the Act of Corfu, the future state was not to be a federal one but a centralized state with local autonomies. So much was clear and was considered necessary, as the future state must be strong, as it would have enemies on or near its borders, Bulgaria and Germany: to the latter it must be a barrier to prevent Ger-

man schemes of conquest in the Near East. Such a centralized state was understood to be desired by the Croatians and Slovenes. Regarding the organization of such a centralized state, Mr. Nintchitch declared that this would be left entirely to the decision of the freely-elected representatives of all the Yugo-Slav people. As soon as practicable after the Yugo-Slav of Austria-Hungary had obtained their freedom, a constitutional convention would be called and this convention would freely draft the constitution of the future state. According to the Act of Corfu, the members of the convention would be elected by equal, direct, secret and universal suffrage.

Mr. Nintchitch discussed a few further details as to the future form of government but was careful to mention that the ideas he expressed were merely his own personal ones. The capital of the new state he thought should be Belgrade but in that case the King would be obliged to be in residence during regular periods of the year at cities in Croatia, Slovenia, etc., and especially at Agram. He mentioned a strong argument, to his thinking, against the maintenance of the present boundaries of the Yugo-Slav portions of Austria-Hungary in the new state, for the Serbs in Croatia, Dalmatia, Bosnia and Hersegovina would in that case desire to be united with Serbia, and as they must have the right of self-disposition this would of itself produce a very material modification of the present boundaries. Moreover, the Croatians of Dalmatia, Bosnia and Herzegovina would also be desirous of being united to Croatia. There were, he thought, about three

million Serbs left in the present Kingdom and as many more in the Banat (Bachka), Montenegro, Croatia, Dalmatia, Bosnia and Hersegovina. The new state would include from twelve to thirteen million inhabitants about one-half of whom would be Serbs.

In a general way Mr. Nintchitch thought that the political organization of the new state should be like that of the present Kingdom of Serbia although the departments into which it would be divided might well have more local autonomy. It would be a parliamentary form of government with the Parliament elected, as prescribed by the Act of Corfu, by equal, direct, secret and universal suffrage. Ministers would be responsible to Parliament. Each of the present Serbian departments has a local assembly elected by universal suffrage. Its legislative powers are determined by the various laws passed by the Skupshtina and are usually limited to small local matters such as primary schools, communal roads, minor sanitary and police matters, etc. The acts of these assemblies are, however, subject to the veto of the Minister of the Interior who is himself responsible to the Skupshtina. Under the new constitution the powers of the departmental assemblies might be considerably enlarged.

Mr. Nintchitch did not think that the various portions of the new Kingdom would be found to differ to any great extent in the degree of their culture and civilization nor that the undoubtedly different interests of different portions would present any difficulties to harmonious cooperation. The different interests would be given free

expression through local autonomies and the freely elected central parliament. It was true, however, that Serbia would enter the new state in a far more exhausted condition than the other Yugo-Slavs. He admitted that the new constitution would naturally be a good deal of an experiment, but changes would subsequently be made as found necessary, and with the profound desire for union of all the component parts of the new state, an arrangement satisfactory to all would eventually be found.

The statements made to me by Mr. Gavrilovitch were, so far as they went, similar to those of Mr. Nintchitch. Mr. Gavrilovitch, however, appeared anxious to avoid entering into details or expressing any personal opinion, stating that all discussion of such matters should be left for after the war and for the constitutional convention. It was sufficient for the present to fight for the liberation of the Yugo-Slav portions of Austria-Hungary. After their liberation it would be time enough to discuss details of the future state which must be based upon the Act of Corfu.

I have (etc.)

H. Percival Dodge.

APPENDIX "C."

The Special Agent at Corfu (Dodge), temporarily at Rome, to the Secretary of State.

No. 113 Rome, September 13, 1918
(Received October 21)

Sir: Referring to my despatch No. 107, of the 26th ultimo, reporting, in accordance with your telegram of August 7, 6 p.m., regarding the position of the Serbian Government as to the character of the relation to be established between Serbia and the Yugo-Slav provinces of Austria-Hungary in the event that the latter obtain their freedom,—I have the honor to inform you that shortly before leaving Corfu I had a conversation upon this subject with Mr. Stoyan Protitch, Acting President of the Council and Minister for Foreign Affairs. Mr. Protitch is generally considered to be closer to Mr. Pashitch than any other of his colleagues and comes immediately after Mr. Pashitch in importance in the Radical Party, which is now in power.

* * * * * * * * *

. . . I inquired of Mr. Protitch as to his view regarding the constitution of a future Yugo-Slav state. Mr. Protitch replied that the foundations for such a state must lie in the Declaration of Corfu, although this declaration might be made even more democratic. All the present Yugo-Slav portions of Austria-Hungary would enjoy absolute political equality with Serbia and there could be no possibility of any Serbian hegemony or superiority of any

sort. Serbia moreover desired no such superiority. He saw no reason why sooner or later Bulgaria should not also join the Yugo-Slav state if she agreed to come in on the same footing as the others. Bulgarians spoke a tongue closely allied to Serbian and there was no very great racial difference between Bulgarians and Serbians, although the former had a considerable admixture of Turanian blood. This would be the logical solution and he greatly hoped it would some day be possible.

Regarding the details of the form of government, these must naturally be left to be decided by the constitutional convention which would be called and elected (as all elections were prescribed to be made by the Declaration of Corfu) by equal, direct, secret and universal ballot. His own idea was, however, that the future state must possess strength. The central Government must, therefore, control military, naval and foreign affairs, national finances and national economic and commercial matters. Also, the civil and criminal law must be uniform for the whole state. Outside of these matters, the rest and all local matters must be left to local assemblies. The administrative divisions of the state might remain as at present, each division having its local assembly, or the present divisions might be somewhat modified or possibly entirely new divisions might be made: All this depended upon the decisions of the constitutional convention. The central Government would be a ministry, responsible to Parliament as at present. Parliament itself might well be composed of two Chambers instead of one Chamber as at present.

Mr. Protitch emphasized the democratic character of the new state and the absolute equality of all its inhabitants and territories.

I have also recently had an interview with General Rachitch, Minister of War, in which I was able to turn the conversation to the same subject. General Rachitch stated that it was quite impossible to go into any details at present as all of these must be settled by the constitutional convention. Nevertheless, he might say that the new state must, of course, be built upon thoroughly democratic principles and upon the outlines so clearly laid down in the Declaration of Corfu. Complete equality would be guaranteed to all portions of the territories and their inhabitants. Serbia must enjoy no position in the new state in any way privileged or different from the other portions. If Serbia should become pre-eminent in the new state it would only be through the individual merits of her population.

Several of my colleagues with whom I have talked on this subject express the opinion that the present Serbia, in the possible future state, will tend to be over-shadowed by Croatia which is only slightly smaller in population and is far more advanced educationally, economically and financially. Croatia has also suffered far less than Serbia in the present and recent Balkan wars. In addition to enormous losses of productive capital, Serbia, it is generally assumed, has lost fully one-quarter of her population since the first Balkan War.

I have (etc.)

H. Percival Dodge